IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16521 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYANTIBHAI KEDARNATH AGARWAL

Versus

COMMISSIONER OF POLICE SURAT CITY

Appearance:

1. Special Civil Application No. 16521 of 2003

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MS Mita S Panchal AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 31/03/2004

ORAL JUDGEMENT

The petitioner above named has preferred this petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order dated 11/10/03, passed by respondent no.1 for detaining the petitioner u/s.3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985, (for short, "the Act") on the ground that the petitioner was involved in five different offences punishable under the Bombay Prohibition Act, 1949.

2. It was alleged against the petitioner that two witnesses had given their statements against the petitioner saying that the petitioner was a "bootlegger" and therefore, was required to be detained. Accordingly, an order of detention was passed by respondent no.1 herein.

3. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been contended by the petitioner that the representation sent by the petitioner was not decided promptly, and therefore, the order of detention is illegal and is required to be quashed and set aside.

4. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita S Panchal learned AGP has appeared on behalf of the respondents. I have heard the learned advocates for the parties and have perused the papers.

5. The learned advocate for the petitioner has contended that the petitioner had submitted a representation in writing to the Minister of State for Home Affairs, Gandhinagar on 18/11/03 and that it was received by the said office on 19/11/03. The said representation was decided on 29/11/03. In support of the said statement, the learned advocate for the petitioner has produced a copy of the representation, as well as the postal acknowledgment receipt and the reply of the Government dated 29/11/03. They are taken on record.

6. The learned AGP has contended that the representation was received by the said office on 19/11/03, and thereafter, it was forwarded to the Department for taking appropriate action. However, so far 20/11/03 and 21/11/03 are concerned, no explanation is rendered on behalf of the Government. It is, therefore, not clear as to why the representation was not considered or forwarded on the above mentioned days.

22/11/03 and 23/11/03 were public holidays. So far 25/11/03 is concerned, again it has not been explained as to why the matter was not dealt with on that day. Therefore, atleast there is a delay of three days in considering the above representation. Thus, delay of three days has not been explained. In other words, there is an unexplained delay of three days in considering the representation of the petitioner.

6. In S.C.A.No.12634/2000 this Court (Hon'ble Mr.Justice H.K.Rathod) has held that a delay of even one day, if unexplained, is fatal to the continuation of detention and the order of detention was held to be illegal. In the present case, we find that there is an unexplained delay of three days as aforesaid in considering the representation of the petitioner and since the said delay has not been explained, the further continuation of the detention of the petitioner cannot be justified and it could not be sustained in the eye of law. Therefore, the detention is required to be quashed.

7. For the foregoing reason, this petition is allowed. The impugned order of detention dated 11/10/03 passed by respondent no.1 against the petitioner, is ordered to be quashed and set aside. Detenu, Jayantibhai Kedarnath Agarwal, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

pravin/